NEW SERENDAH RUBBER CO. LTD.

v.

COLLECTOR OF LAND REVENUE, KUALA LUMPUR

HIGH COURT MALAYA, KUALA LUMPUR
MOHD. AZMI J
[CIVIL APPLICATION NO. 6 OF 1973]
13 MARCH 1981

LAND LAW: *Land Acquisition - Land in two administrative districts - Compensation - Basis of award - Onus of proof on owner that award of Collector inadequate - Quantum of proof on balance of probabilities - Defect in calculation on plot-wise method of valuation - Court entitled to make own valuation on rejection of valuers' report - Post notification transaction to be considered.*

The applicant was the owner of Serdang Estate which was situated partly in Mukim of Petaling in Kuala Lumpur District and partly in Mukim of Kajang in the Ulu Langat District. On 9 April 1970, a notification under s. 4 of the Land Acquisition Act 1960 for the requisition of the whole of Serdang Estate was published in the Selangor Government *Gazette.*

The applicant was not claiming for compensation for injurious affection nor severance on account of the acquisition being done by two different Collectors. However, the applicant, who was also the owner of Connemara Estate, was claiming for compensation for severance on the ground that Connemara Estate and Serdang Estate though 8 miles apart were being run as one unit under one management and that due to the acquisition it was alleged that there was an increase in the management costs of Connemara Estate.

Although the whole of the Serdang Estate had been acquired, the present application was only in respect of the portion in Kuala Lumpur District. The parties have agreed that the valuation arrived at in the application would also be applicable to the portion in the Ulu Langat District.

On 11 November 1971, the Collector of Land Revenue, Kuala Lumpur at the conclusion of his inquiry, basing on the valuation reports of the government valuer, awarded the sum of RM2,425 per acre.

In arriving at his valuation, the government valuer considered eight sales situated in the neighbourhood of the acquired land. However, none of them, which were small rubber holdings, was in any way comparable with the land acquired. The valuation was also done on a field by field, or plot-wise basis - that is, the land acquired was "divided" into 12 lots which, in turn, were divided into sections, and given valuation according to age or clone of the rubber trees for each lot and whether it was a rear or road frontage land, based on the value of the eight comparable sales.

The Valuation Report of the applicant's valuer was arrived at by the comparison method which was then cross-checked with the Residural Method of Valuation, taking the sale of Sungei Way Estate, situated between Kuala Lumpur and Klang, as the cornerstone of his valuation. Apart from its agricultural usage and similarity in size with the acquired land, there were no other actual similarities.

Held:

[1] The valuation on field by field, or plot-wise basis, in this case was not the proper method of valuation as the clone of the rubber trees in respect of the eight comparable sales had not been taken into account.

[2] The applicant had discharged the burden of showing the Collector's award was inadequate and wrong on the ground that there was a serious defect in the calculation of the plot by plot method of valuation.

[3] In rejecting the Valuation Reports of both valuers, the Court was entitled to make its own valuation.

[4] A post notification transaction must not be ignored altogether.

[5] By virtue of s. 47(2) of the Land Acquisition Act, separate assessments should be made for land and buildings.

[6] The claim for severance being a fresh item, which was not claimed before this application was heard, should not be entertained.

[Order accordingly]

Cases referred to:

Asst. Development Officer v. Tayaballi Allibhoy Bohori [1933] AIR Bom 361
Superintendent of Lands and Surveys Sarawak v. Aik Hoe & Co. Ltd. [1966] 1 MLJ 243
Nanyang Manufacturing Co. v. C.L.R. Johore [1954] MLJ 69
Uttar Pradesh Government v. H.S. Gupta [1957] 44 AIR SC 202

Legislation referred to:

Land Acquisition Act 1960, ss. 4, 8, 38(5), 41(3), 47(2)
Land Acquisition (Amendment) Act 1976, s. 5

For the applicant - SDK Peddie; M/s. Skrine & Co.
For the respondent - Dato' Wan Yahya bin Pawan Teh

JUDGMENT

Mohd. Azmi J:

This application is an objection referred to this Court by the Collector of Land Revenue, KL, under s. 38(5) of the Land Acquisition Act No. 34 of 1960, against the award of compensation of the Collector in respect of the compulsory acquisition by the Selangor State Government for the Ministry of Agriculture and Co-operative of a rubber estate known as Serdang Estate, of which the applicant is the registered owner. The estate, which has a total area of 1199 acres 2 roods and 15 poles, is situated in two administrative districts, with the result that the acquisition is done by two different Collectors. The portion in the Mukim of Petaling in Kuala Lumpur District is 556 acres 3 roods 15 poles, and the remaining portion in the Mukim of Kajang in the Ulu Langat District is 642 acres 3 poles. Although the whole of Serdang Estate has been acquired, the present application is only in respect of the portion in Kuala Lumpur District. Both parties in this application have, however, agreed that whatever valuation arrived at by this Court will also be applicable to the portion in Ulu Langat District, and that the applicant is not claiming for compensation for injurious affection or severance on account of the acquisition being done by two different Collectors. But the applicant, who is also the owner of Connemara Estate, is claiming for compensation for severance on the ground that Connemara Estate and Serdang Estate though eight miles apart were being run as one unit under one management and, as a result of the acquisition, it is alleged that there is an increase in the management costs of Connemara Estate, which has an area of 1,400 acres.

The award of the Collector of Land Revenue, Kuala Lumpur, in this application pertaining to 556.92 acres of the estate, i.e. the portion situated in the Mukim of Petaling, comprised in Grant Nos. 13634, 12560, 6417, 5490, 16235, 21658, 21218, 6415 and 8602 for Lots 5378, 3246, 2581, 1202, 5259, 5263, 5379, 2580 and 1698 respectively, and Entry Mukim Register Nos. 3838 Lot 920 and No. 3839 Lot 921, is RM2,425 per acre. At the conclusion of his enquiry, the decision of the Collector made on 11 November 1971, reads as follows:

> I agree with the valuation submitted by the Valuation Officer as in (33)A PHTKL. 9 September 1969, as at RM2,425 per acre and the total area affected is 556.920 acres. As such, I fix an award a total compensation of RM1,350,531.

The valuation referred to in the Collector's decision consists of Exhs. R1 and R2 - valuation reports prepared by Mr. Khong Mun Keong (RW1), a Government Valuer attached to Valuation Department of the Treasury dated 8 October 1971. The valuation is made on the basis of Serdang Estate as a whole totalling 1199.670 acres. The opinion of the valuer reads:

> Having considered all the relevant factors, I am of the opinion that the market value of the above property under para. 2 of the first schedule of the Land Acquisition Act 1960, as at 9 April 1970, is RM2,425 per acre overall.

A notification under s. 4 of the Land Acquisition Act that the land, i.e. the whole of Serdang Estate, was likely to be acquired was published in the Selangor Government *Gazette* on 9 April 1970. This was followed by a declaration of intended acquisition under s. 8 of the Act which was published in the *Gazette* on 8 April 1971. Since the notification under s. 8 was published within twelve months of s. 4 notification, the relevant date of valuation in this case is 9 April 1970, in determining market value under the First Schedule of the Act. But, it is common ground that this case is not caught by the amendments to the first schedule introduced by s. 5 of the Land Acquisition (Amendment) Act 1976 (Act A336).

In this application, it is not in dispute that it is for the owner of the land acquired to prove that the award of the Collector was inadequate. (see *Assistant Development Officer v. Tayaballi Allibhoy Bohori* [1933] AIR Bom 361, 364 and *Superintendent of Lands and Surveys Sarawak v. Aik Hoe & Co. Ltd.* [1966] 1 MLJ 243, 247). The first question for determination before the Court therefore is: has the applicant discharged the onus of proof, on balance of probabilities in the evidence, that the award of RM2,425 per acre was wrong or inadequate? If the award was wrong or inadequate, the second issue is: what was the proper market value of the land as on 9 April 1970?

On the first issue, I find the Collector's award is entirely based on Mr. Khong's valuation. In this case, although the respondent's Valuation Report consists of Exhs. R1, R2 and R3, and the valuation method used is supposed to be by way of comparable lands, it is clear from the evidence of Mr. Khong (RW1), the Government Valuer, that although the eight sales which he considered in Exh. R1 (see Schedule I of the Valuation Report) are situated in the neighbourhood of the land acquired, none of them is in anyway comparable with the land acquired. As stated by Buhagiar J in *Nanyang Manufacturing Co. v. C.L.R. Johore* [1954] MLJ 69, 71.

> I consider that the safest guide to determine the market value is evidence of sales of the same land or similar land in the neighbourhood, after making due allowance for all the circumstances.

In my view, the eight sales of small rubber holdings, all of which are between 3 and 4 acres in area except for one sale which is 11.112 acres, are no basis for comparison for the purpose of valuation of a rubber estate of more than 1,000 acres in area. If at all, the prices sold for these lands are merely consistent with Mr. Khong's testimony that after 13 May incident in 1969, the property market in general was depressed and that prices started to pick up again from 1971. Indeed, Mr. Khong admits in evidence that these eight sales are not comparable lands and that he used them for the purpose of his valuation in Exh. R2 where the valuation was done on field by field, or plot-wise basis. Although Mr. Khong claimed the method of valuation in Exh. R2 is his own invention, it was, *inter alia,* held in *Uttar Pradesh Government v. H.S. Gupta* [1957] 44 AIR SC 202 that "where in computing compensation for acquisition of an "estate" outside the Municipal area, the High Court had given valid and weighty reasons for adopting the principle that the valuation should be on plot-wise rate though there were certain advantages in computing the value at the block rate where vast area of land was acquired. It was held by the Supreme Court that in the circumstances of the case, the proper mode of valuation should be on plot-wise basis". What Mr. Khong had done in Exh. R2 was to divide the land acquired into twelve lots which, in turn, were divided into sections, and gave them valuation according to age or clone of the rubber trees for each lot, and also according to whether it was a rear or road frontage land, based on the value of the eight sales in Exh. R1. After getting a figure of RM2,517 per acre, he deducted 10% for size allowance, and after giving RM200,000 for value of buildings on the acquired land, he arrived at the market value of RM2,425 per acre which is the amount awarded by the Collector. In my view, in the absence of sale of rubber estates in the neighbourhood, this method might have been useful. But in the present case, there is evidence of sale of West Country Estate (Exhs. R3 and R9) in the neighbourhood which Mr. Khong did not take into consideration, apparently because it was a post notification sale and also as the sale was only known after he had submitted his report. Further, even if the plot-wise basis valuation is the proper method of valuation in the present case, Exh. R2 is defective and unreliable, in that the clone of the rubber trees in respect of the eight sales in Exh. R1 had not been taken into account, although the clone of the land acquired was considered. In my view, this is fatal to this method of valuation since the eight sales in Exh. R1 are supposed to be comparable with the twelve artificial lots on the acquired land. Since Exh. R2 is, in fact, the very basis of Mr. Khong's valuation, it cannot be said that the Collector's award of RM2,425 per acre inclusive of compensation for buildings can be held to be the proper market value of the acquired land on the relevant date. Having regard to the evidence in this case including the evidence of the applicant's valuer, Mr. Lee Yoke San (AW2) as regards Mr. Khong's valuation, I find the applicant has discharged the burden of showing that the Collector's award is inadequate and wrong on the ground that there is serious defect in the calculation of the plot by plot method of valuation.

On the second issue, based on the original Valuation Report dated 2 July 1970 (Exh. A1) prepared by the applicant's valuer, Mr. Lee Yoke San (AW2), the market value of the acquired land was assessed at RM8,000 per acre. But the applicant now claims RM7,200 per acre based on a Revised Valuation Report of 1979 (Exh. A2). In his evidence, Mr. Lee testified that his valuation was arrived at by comparison method and then cross-checked with Residual Method of Valuation. He took Sale No. 6 in Schedule X of Exh. A2, as the cornerstone of his valuation, on the premise that although that land is not in the neighbourhood of the land acquired, it is comparable land having regard to its size and other alleged similarities. The Court is particularly asked to accept the proposition that on the relevant date, i.e. 9 April l970, the acquired land situated between Kuala Lumpur and

Kajang was comparable to Sale No. 6 (Sungei Way Estate) situated between Kuala Lumpur and Klang as it stood on 11 January 1965. Sungei Way Estate which is now known as Subang Jaya, with an area of 1440.562 acres, was sold on 11 January 1965, at RM7,200 per acre. Having regard to the evidence, I am of the view that it is wrong to take Sale No. 6 as the basis for the valuation of Serdang Estate. Apart from the complete differences in location, Sungei Way Estate was much more ripe for development in January 1965 as compared to the acquired land in April 1970. Whatever might be the year in the sixties and seventies, Sungei Way Estate was clearly situated in a more superior area as compared with Serdang Estate as far as development potential was concerned, notwithstanding the existence of the railway line separating it from the Federal Highway. Being situated along the railway line and Federal Highway between Kuala Lumpur and Port Klang, Sungei Way Estate in 1965 was in the path of intensive housing and industrial development, along the Klang Valley. Looking at Subang Jaya now, it is not difficult even for a layman to realize the high potential value of the land even in 1965. Indeed, before Sungei Way Estate was sold on 11 January 1965, application for conversion and sub-division of the Estate had already been submitted for housing industrial development in 1964 (see Exhs. R10, R11, R12, R13 and R14); and by letter dated 19 August 1964 (see Exh. R15), the Town Planning Authority had, in fact, indicated that after consulting the various technical departments, it had no objection to the application for conversion. Further, according to Exh. R15, the application was favourably considered by the Klang Valley Regional Planning Committee. On the other hand, the land acquired is situated in the interior part of Kajang - an area which cannot be described as ripe for development as Sungei Way Estate was in January 1965. Apart from the agricultural usage, the only actual similarity is the size of both lands - Serdang Estate 1,199 acres and Sungei Way Estate 1,440 acres. The similarities end there. Although both were rubber estates, when Serdang Estate was acquired, it was a piece of agricultural property with building potential, whereas when Sungei Way was transacted at RM7,200 per acre in January 1965, it was sold as agricultural land but with actual high density building potential. As regards access, from Exh. A1A, there were three ways how one could go by road from Kuala Lumpur to Serdang Estate in April 1970. The first was through Kajang town; the second via Serdang which is referred to in the evidence as northern access and was about fourteen miles from Kuala Lumpur; and the third via Puchong which is referred to as southern access which was about seventeen miles from Kuala Lumpur. The most natural access is via Serdang - the northern access through MARDI land, which was once part of the Estate, but acquired by the Government in 1965 at RM2,500 per acre with compensation at RM500 per acre for injurious affection. As such, the shortest legal access from Kuala Lumpur is via Puchong by a narrow winding road. In 1970, development towards Serdang was not as attractive and concentrated as the Kuala Lumpur side of Klang Valley in 1964. In the circumstances, I would exclude Sale No. 6 for the purpose of valuation in the present case.

Having rejected both the valuation of Mr. Lee Yoke San (AW2) and Mr. Khong Mun Keong (RW1), I think the Court is entitled to arrive at its own valuation based on the available evidence. In my view, the West Country Estate (Exh. R9) offers the only available similar land in the neighbourhood of the land acquired. Both are rubber estates located in the same neighbourhood as shown in the map marked as Schedule II in Mr. Khong's Valuation Report (Exh. R1). As submitted by learned Legal Adviser Selangor for the respondent, although West Country Estate was a post notification sale, the transaction having taken place on 3 March 1973, it cannot be ignored and the Court is entitled to make its own valuation. In *Aik Hoe & Co. Ltd.* case (*ante*), Suffian J (as he then was) at p. 247

adopted with approval the judgment of Broomfield J in *Assistant Development Officer v. Tayaballi Allibhoy Bohori (ante)* at p. 363 to the effect that all transactions must be relevant which can afford a fair criterion of the value of the property as at the date of notification, and post notification transactions must not be ignored altogether.

Thus, I am of the view that even a post notification sale can be comparable land provided it is part of the same land or similar land in the neighbourhood. West Country Estate with an area of 6,774 acres were sold about 2 years and 11 months after the relevant date of valuation at a price of RM3,500 per acre. Adjustment must, of course, be made as regards time factor, size difference and other relevant factors.

The learned State Legal Adviser for the respondent submits that, if West Country Estate were to be the basis of valuation, there should be scaling down of 50% for the difference in time after giving 10% allowance for size. Although the property market was generally depressed after 13 May incident in 1969, it began to pick up again in 1971, and taking into account the various developments that had taken place in the neighbourhood between the relevant date and 3 March 1973, I do not think that the value of West Country Estate could only fetch about half of RM3,500 in April 1970. Having regard to all the evidence, I think it is reasonable and more realistic to reduce the value by only 25%, so that if West Country Estate had been sold in April 1970 it would have fetched a market price of RM2,635 per acre. Giving Serdang Estate 10% allowance for size, that figure would increase to around RM2,894 per acre. As a round figure, I would value the acquired land at RM3,000 per acre as on 9 April 1970.

As regards buildings on the land, I am of the view that by virtue of s. 47(2) of the Land Acquisition Act, separate assessments should be made for land and buildings. Since the valuation of RM200,000 made by the Government Valuer has not been challenged, I think it is fair that this valuation should accepted as fair compensation for the buildings, on the basis that it is for the whole of Serdang Estate.

In so far as claim for severance is concerned, I find it is a fresh item which has never been claimed before this application was heard. As such, it should not be entertained. Further, Mr. Brown (AW1), the director of applicant company, merely testified that as a result of the acquisition, there was an increase of management costs of Connemara Estate which was situated about eight miles away from the acquired land. But Mr. Brown did not give any specific figures of such increase, if any. In the circumstances, I find the applicant has failed to discharge the burden of proof under this item and the claim for severance must fail.

In this case, on land valuation, I agree with the opinion of one of the Assessors, Mr. Fong Ying Hong, but disagree with that of Mr. V.K. Tharmalingam.

Thus, in this application, I would enhance the Collector's award on market value of the land from RM2,425 to RM3,000 per acre. For the area of 556 acres 3 roods 15 poles (556.92 acres) in the Mukim of Petaling, I award a figure of RM1,670,760. With regard to compensation for buildings on the land, I award the sum of RM200,000 for the whole Estate.

Since both the original claim and the revised claim of the applicant exceed by 20% of the Court award, I order that each party to pay its own costs.

As regards interest, I order that the applicant be paid interest at 6% per annum on RM575 per acre from date of taking possession by the Collector to date of payment.

Under s. 41(3) of the Act, I order that each of the Assessors be paid a fee of RM500, and by consent this fee is to be borne equally by both parties.

I also order that the deposit of RM1,000 be refunded to the applicant.

Also found at [1981] CLJ 131